

2017 Myanmar Update Conference

Australian National University

Canberra, 17-18 February 2017

**Justice Seeking Strategies in Everyday Life:
Case Study among Urban Migrants in Yangon**

Dr. Than Pale

Professor

Department of Anthropology

University of Yangon

February, 2017

Justice seeking strategies in everyday life: Case study among urban migrants in Yangon

Than Pale (Professor, Department of Anthropology, University of Yangon)

Abstract:

This paper explores how poor urban migrants deal with disputes and crimes in Yangon's largest industrial areas. The main argument is that migrants have very low access to formal justice institutions, and few powerful personal connections to draw on, so they rely on informal mechanisms, and increasingly the new legal aid Community Based Organizations (CBOs). The area is home to the largest population of unregistered labour migrants in Yangon and is infamous for high levels of crime. Due to low job opportunities in the rural areas, both men and women, with their families as well as adolescents from all over the country settle here to work at the factories or to do different forms of day-labour, often with very low incomes. As this kind of labour migration is consistently increasing, most migrants live under dire conditions in squatter like housing, and some face evictions. Ethnographic research in the area during 2015-16 reveals that problems and crimes such as domestic violence, adultery, rape, child abuse, debt and theft cases are very frequent in the area. This paper focuses on what migrant people do when they face such problems and how justice providers resolve these problems.. In the resolution of cases, it can be seen that informal one Hundred Household (100 HH) leaders are important, but when the case ends with formal justice providers, the migrants tend to lose the case because of lack of monetary means and powerful relationships. Now there is a growing number of CBOs that provide legal aid to poor migrants, but mainly in child abuse cases. Case studies on the experiences of poor migrants illustrate that justice-seeking strategies vary depending on economic situation, education, knowledge of the law and powerful personal connections.

Introduction

This paper explores how poor urban migrants deal with disputes and crimes in Yangon's largest industrial area, by examining how different types of disputes are experienced and resolved. The research principally analyses the role of ward level actors in dispute resolution processes. The area of study, Hlaing Thayar township is home to the largest population of unregistered labour migrants in Yangon and is infamous for high levels of crime and social disputes. Many of the problems result from rapid urbanization, and inadequate housing and livelihood opportunities for rural migrants in the Myanmar political and economic transition. The upsurge in new construction in Yangon's centre and proliferation of industrial zones on its periphery have been a big draw for unskilled migrants to come to Yangon from the rural areas, especially the Delta. The magnetism of Yangon intensifies as the central government's political and economic reform process gathers steam (Forbes 2016, p.197). One recent study highlights that until about 2005, many migrants to Yangon were individuals, whereas more recently whole households are likely to migrate, presumably with intentions of more permanent relocation (Boutry 2014 in Forbes 2016, p.199). As the cost of housing and living in Yangon are already high and rising, most migrants coming to the city settle in the periphery. Informal settlement is already taking place around the sites of industrial estates that are themselves in the peri-urban areas (Forbes 2016, p.199).

This paper analyses how these conditions affect the poor migrant's access to justice when they face crimes or are engaged in disputes. The main argument of the paper is that migrants have very low access to formal justice institutions, and they have few powerful personal connections to draw on. For this reason the migrants rely on informal mechanisms of dispute resolution, yet sometimes they do not even seek assistance or report their cases. I will analyse how migrants deal with disputes, and then explain why they have less access to the formal systems and why they sometimes do not even report cases to the informal mechanisms.

The insights of this paper are based on ethnographic research conducted between November 2015 and September 2016 in two wards of Hlaing Thayar township. In the fieldwork I explored how migrant people solve their everyday problems, how they find ways to get justice and how security providers operate at the ward level to provide security.¹ I particularly focused on access to justice strategies, including formal and informal institutions. The paper

contributes to the debate about legal pluralism, which is a concept that has generally been used to define a situation in which two or more legal systems coexist in the same social field (Pospisil 1971; Griffiths 1986; Moore 1986, p. 870). By focusing on Yangon, this paper adds new empirical knowledge to the debate about legal pluralism, which hitherto has been informed by hardly any studies from Myanmar.² Moreover, I consider legal pluralism in relation to poor urban migrants.

This paper proceeds in five sections. The first section introduces the concept of legal pluralism, followed by a second section that provides a background to the research study area and the situation of urban migrants in the Myanmar transition period. The third section explains the research methodology, which is followed by the main research findings. I outline the types of cases that affect migrants and how these are resolved. Through these cases, it is found that when migrant's cases end up in the formal system, this is because the ward leaders push the victims to go to the formal level. Otherwise, they prefer to either use the informal system or not to report at all. The fourth section explains why this is the case. The conclusion uses the data to make some recommendation for the government and NGOs.

The legal pluralism perspective

In order to understand the variety of actors engaged in dispute resolution in Hlaing Thayar I draw on theories of legal pluralism and understandings of formal versus informal systems. Griffiths (1986, p. 38) described that "legal pluralism is the presence in a social field of more than one legal order or law". Similarly, Hooker defines legal pluralism as the existence of "multiple systems of obligation within the confines of the state" (Hooker 1975, p. 2). For instance, legal pluralism recognizes that there are other rules and forums for resolving disputes than those of the state. It is different from legal centralisms, where only one set of laws and understandings of justice are seen as valid. Griffiths argues that legal centralism is an ideology that situates state law as superior to other legal orders (Griffiths 1986, p.3-5). In this paper, the concept of legal pluralism is used to reflect on disputes resolution at the community or neighbourhood level. Problem-solving mechanisms vary considerably depending on individuals. People use different mechanisms to solve the problems and their understanding of the concept of 'justice' varies considerably from the lowest local level to the highest level. Some of the literature makes a distinction between formal and informal justice systems or mechanisms (Harper 2011; UNDP 2012, UNICEF, UN Women, Wojkowska 2006).

For the context of Hlaing Thayar I find Erica Harper's (2011) definition of informal or non-state justice systems useful. According to her informal includes indigenous, customary and religious legal orders, alternative dispute resolution mechanisms and popular justice. The formal justice system refers to controls organized by the state and enforced by specific institutions that follow procedures determined by law. These include courts, the police, prosecution offices and correctional facilities. Customary justice systems are the cornerstone of dispute resolution for the poor and disadvantaged in developing countries, with some studies estimating that 80 percent of conflicts are resolved through such fora (DFID2004, p. 3). In Myanmar, justice mechanisms also include the ward and village administrators who are local leaders, and can operate informally, but they are also part of the state system, as the lowest level of the administration. Informal Justice Systems involve a preference for less formalized settlement procedures, such as voluntary participation and the reaching of decisions based on mutual consent (UNDP 2012, p. 1, 30 and 34).

Legal pluralism is everywhere, from the lowest local level to the most expansive global level. Globalization refers to a cluster of characteristics that reflect an increasingly interconnected world: the migration of people across national borders; the building of global or transnational political organizations or regulatory regimes, and so forth (Dauvergne, 2003; Tamanaha 2008, p. 386-7). Because of globalization, observers have noted that states are losing power in various ways (Habermas 2001). States have given up some of their sovereign power to control their own affairs in certain economic, political and legal respects, subjecting themselves to a higher authority. At the local level, legal pluralism is also significant, illustrating that state institutions do not have a monopoly on justice provision. In situations where people face disputes, many parties choose to bypass state court systems, which are seen as inefficient, unreliable, too costly or too public, resorting instead to arbitration or private courts. Many of the massive slums that are ubiquitous in large cities around the world function with little or no official legal presence, beyond the purview of law and courts, often without legally recognized rights. Order is maintained and interaction is conducted in these areas through other social norms, institutions, or mechanisms (Tamanaha 2008, p. 387). Santos (1977), for instance, studies law and order-making in the favelas of Brazil, showing how residents of an illegal squatter settlement create their own legality using the forms and symbols of state law, which they call the 'law of the asphalt' (Santos 1977, in Merry 1988, p. 881).

I add to the literature on legal pluralism, with the focus on the different areas of power and exclusion of certain groups. Like Erin Moore's (1993) study of legal pluralism in India, I also see that certain groups in the urban areas are not equally benefitting from legal pluralism. Whereas Moore (1993) focuses on gender, I focus on poor urban migrants. These migrants have problems accessing the formal system. They also face difficulties in going to local leaders and elders with their issues. Therefore they are also insecure about addressing the informal mechanisms. Legal pluralism was in the past used to describe the relations between colonized and colonizer, and now it is also used to describe the relations between dominant groups and subordinate groups, such as religious, ethnic, or cultural minorities, and migrants. The literature looks at unofficial forms of ordering located in social networks or institutions, rather than alone in formal systems (Woodman, 1987-88:3-4; Macaulay, 1986; Merry 1988). The main insight of this paper is that migrants' lack of access to resolution mechanisms, and their reluctance to report cases is related to their poor economic situation, lack of knowledge of official procedures and lack of personal contact with powerful people. As migrants living as squatters are not officially recognized by the government, their problem solving mechanisms are informal.

Urbanization and migrants in Yangon

Yangon is the primary city in Myanmar and the current population is 5.2 million, having grown by 0.7 million since 2006, at an average rate of 1.9 percent per year. Urban growth is accelerating and the Japan International Cooperation Agency (JICA) estimates that Yangon's growth rate will be two percent over the next years (JICA and YCDC 2013). If the 2010's trend of urbanization in Myanmar continues, the urban population will exceed the rural by the year 2040. The pace of urbanization is related to the recent political and economic opening of the country, which has led to unprecedented levels of foreign investment as companies began to arrive to take advantage of the frontier market with cheap labour and abundant natural resources. New business and industries will generate new job opportunities, which will encourage more people to move to Yangon. As there is a high rate of poverty and landlessness in many rural areas, migration to the city will increase as people seek better opportunities (Boutry 2014; Forbes 2016, p. 199). Yangon becomes the place where many people settle in to meet job prospects, and consequently the population grows.

The fastest growing township in Yangon is Hlaing Thayar in terms of both formal and informal settlement populations. Hlaing Thayar also has the highest occurrences of

diseases, related to poor environmental conditions and lack of water and sanitation facilities. In the current situation, robbery cases, neighbour disputes, assaults in the street, rapes, domestic violence, child abuse and other cases are happening in the everyday life within the wards of the township. There are also massive problems with alcohol and drugs, including kids who sniff glue. Crimes and problems in the area are frequently reported in the newspapers. As a result, migrant workers are facing huge difficulties with regards to social services such as health care, education and so on. There is no guarantee for stable living conditions for themselves and their families. During the transitional period in Myanmar, the government, NGOs, and CBOs are implementing programs to develop better legal practices. However, in urban areas in Yangon, disputes and crimes remain high, and few migrants are able to benefit from the formal legal services. Instead, they resort to informal mechanisms or get no justice at all. That is why Hlaing Thayar township, with high cases of crimes and conflicts for migrants population, was selected as my study area for exploring how and why migrants have low access to formal justice institutions.

Research Methodology

This study relies on qualitative data, by drawing on information obtained through research conducted by the project: "Everyday justice and security in the Myanmar Transition". Regular visits to the study areas and data collection was conducted by interviewing migrant workers. I also interviewed a number of actors who engaged in resolving disputes such as domestic violence, robbery cases, adultery and theft cases, to understand how they resolved such disputes. These actors included the ward administrator, one hundred household leaders and police officers.

Two wards were selected in HlaingThayarTownship³. I explored what common problems existed and the main pathways to justice that are used by migrant workers. This involved asking people to describe actual cases that had happened, and then I got more and more information about each case to understand the practices and opinions of the people involved. I also looked at the principal barriers that migrant workers face when they seek justice. Interview guides were applied in collecting the data. I conducted sixty interviews and collected fifty cases such as theft/robbery, rape, debt, adultery, dispute, accident, land, lie and other cases from two wards in Hlaing Thayar.

Everyday disputes and resolution processes

This section outlines the most frequent types of cases that occurred in the research area – robbery/theft, debt, rape, and marriage disputes (domestic violence and adultery) - and then explores for each type of case how these tend to be handled by the involved parties and the justice providers. In the next section, I discuss the reasons why the different justice patterns occur in the research area. Not only informal resolutions, but also formal resolution processes are discussed. As defined in the introduction, the formal justice system includes the police, courts and any government official above the ward level. Informal justice includes resolutions done by family members, relatives, neighbours, elders and ward level actors, like the local leaders such as the ward administrator and the one hundred household leaders. The ward administrator is an official authority in the government system, but along with one hundred household leaders, he also engages in informal justice, which is focused on negotiation. The research shows that ward level actors play an important role in providing justice solutions.

According to the research's results, marriage disputes, debt, and theft cases are the most frequent in the area of study. Rape is also very significant. The types of disputes emerging from the research are primarily concerned with the low economic situation and inter-personal struggles. Most disputes are related to the problems associated with daily activities and survival of the poor migrants. In regards to the most frequent cases, it varied what actions the victims or the parties took to deal with the case. As opposed to theft cases, people did report domestic violence, debt and neighbour and family disputes to the one hundred household leaders who resolve most of these types of cases.

Here, I discuss the general patterns of dispute resolution. One significant finding is that migrants tend not to report thefts at all, neither to the police nor to the local ward leaders. This is both due to their disbelief in the authorities helping them to get their things back, and also due to religious beliefs in previous life and fate. Debt cases on the other hand are taken to the ward leaders. They are resolved informally because they are regarded as illegal and thus cannot be resolved in the formal system. Also, marriage disputes like adultery cases are resolved informally with compensation, even though it involves a criminal offence. Rape is generally kept secret and not resolved by ward leaders, and if it is at all reported it goes to the formal system, however not always with satisfactory solutions for the victims.

Next, I address how these patterns were evident in the most frequent cases, beginning with theft and robbery.

Robbery and theft cases

Robbery case and theft case are very common cases in the study areas. People are facing these kind of cases in everyday life. These cases occur because of the problematic economic situation. Most of the young women and men work at garment factories or other industries. They work overtime very often and frequently at night. On the way to the home, young women get robbed, like losing their gold chain, hand phone or money. Some places are darker and more deserted and have no streetlights. These situations easily cause robbery cases. A forty-five years old woman in Ward B said:

Five years ago, people used bicycle when they go from place to place and there were not many motorbikes. People went on foot or took trishaw in the ward. At that time, thieves stole something by using their bicycle. Local people caught the thief easily in the ward. Nowadays, motorbike taxis and motorbike users have dramatically increased in the study areas. Robbers and gangsters also use motorbike and rob things in groups.⁴

My informants also told me that crimes happen when young couples and garment factory workers spend their leisure time in the pagoda where there are no houses and it is deserted. Gangsters watch for an unguarded moment. In the daytime, anybody who are talking on the phone in the streets risk being robbed by motorbike gangsters. Especially, young women face such a risk. A twenty years old male factory worker in Ward A said:

Women are weak physically and carry handbags, umbrella, and something in their hand. They cannot protect themselves against the robbers. Even when people see the robbery happen they cannot help to each other. They are afraid of the robbers who can revenge them and attack them.⁵

With regard to this fear that they would be attacked by robbers further if they reported the case, one trishaw driver from Ward B said: “everybody knows who we are in the Ward. Helping to resolve a theft is more dangerous. Even if I have a chance [to help], I cannot do anything to the motorcycle thieves. My family members depend on me. If I do anything, the

guy [thief] will revenge me one day. Especially, low-wage migrant workers are at high risk of getting harmed and their access to justice is limited.

One clear pattern, according to the cases I followed and the interviewees' statements, is that poor migrants do not report the robbery cases to the police and not even to the local leaders, like the Ward Administrator (WA) and the one hundred household leader. A twenty-three years old girl, who works in a garment factory, from Ward Asaid:

It is difficult to catch the robber because they rob gold chain, earring, and hand phone by using motorbike. No police guard is on the road. I have heard that all robbers handle knife in hand. I am a stranger in here and I have no relative and no family member in here. I come from another ward and this case happened in another ward. So, I didn't try to report the case. If I report to the one hundred household leader or the WA, it is rare to get back my things. I never heard that people get back thing from the robber.⁶

A woman who I spoke with similarly said: "my daughter's gold chain was robbed by the robber on the way back home". For that case, I didn't report to the one hundred household leader and [instead] I now pick up my daughter at the bus stop every day. It is safe for her. This is an easy solution for me.⁷ As reflected in this statement the woman said preferred just to enhance the security of her daughter by accompanying her to the bus stop herself, rather than report the case. In most theft cases people in the ward did not seek justice. They may take advice from neighbours, friends, and may discuss the case with the ward leaders, but often the advice is: do not report the case. Not even when people have a motorbike stolen do they report to the ward administrator or the police, as illustrated with the following case.

Case 1: Theft of motorbike

A forty-six years old man earned an income by driving motorbike for three years in Hlaing Thayar. He told me about the loss of his motorbike:

One guy approached me and I had been familiar with him for about three days. At that time, we sat together in the teashop and talked very friendly. After three days, the guy took my motorbike and then he said "I will come back within one hour". I believed him

and I gave my motorbike to him. The guy didn't come back with my motorbike. I didn't know where he lives. My motorbike is expensive with license.

When I asked him if he reported the case anywhere, he said:

I heard as a rumour from my colleagues that the guy who stole my motorbike is one of the gangsters in Hlaing Thayar. For this reason, I didn't report to the ward administrator and 100 HH leader or to the police. If I open this case, I am so afraid to be attacked by the guy [who stole the bike]. Reporting is not safe for taxidriver. I cannot spend so much time for this case at the police. Daily income is important for my family. So, I borrowed money to buy a new motorbike to get daily income, which is important for my family.⁸

Rape cases

Lack of reporting is also observed in rape cases, but in comparison with theft, I found that more rape cases were reported and ended in the formal system. However, often the victim side was not satisfied with the formal solution and sometimes they preferred compensation from the perpetrator. Another finding is that the ward administrator never wanted to resolve these cases, seeing them as only cases for the formal system. What I found out was that when the victims are from poor migrant families, they do not inform about the rape at once to their parents or to their neighbours. Before any formal solution, victims kept silent and did not report it themselves to anyone. If the victim gets pregnant, however, and it is discovered by others, the case may be resolved legally in the formal court. The wardleaders are not allowed to resolve rape cases informally.

According to interviews, the victims of rape are ten to sixteen years old and usually from poor migrant families. In addition, their education level is very low. Their parents are day labourers and have a low economic standard. Most of the rape cases that we actually brought out and not silenced were resolved formally in the court. As an exceptional case, it was found that poor family members of the victim settled informally with compensation. This kind of case appeared in poor family households. Most of the migrants and the local people have lack of knowledge about rape cases. Especially, poor family members want to use attorneys to get compensation. In such cases, the victim's parents make the decision in the case to get compensation from the perpetrator rather than taking the case to court. Victim's grievances are not included in the consideration. I also found a case where the perpetrator tried to avoid a court case by offering compensation to the victim's family. Rape victims are hesitant to

report, because there is much shame associated with bringing rape cases out in public. The victims worry about humiliating their families. This situation makes them weak in seeking justice legally.

Increasingly, the NGO and CBOs provide free legal aid and counsel to vulnerable persons, especially women and children. This has likely meant that more rape cases are reported to the formal system, because according to one legal aid worker whom I spoke with, he usually advises the victims' families not to accept compensation but to go the legal way. NGOs stand on the child victim's side and hire a lawyer to settle formally the case. Even when NGO legal aid providers support the victim, some parents do not want to settle the case in the court. They do not want to mention it in front of the court. If they go to the court, the victim will suffer from psychological problem. It is one reason and another reason is that they want to get compensation for grievances. They cannot consider whether this case is justice, when the rape case is settled with money. They think that going to the court again and again and answering questions at the court make them more shameful and more stressful. Another reason is that money compensation is supportive for their family. However, not all victim's families accept compensation. I illustrate this with the following case.

Case 2: Rape

I interviewed a sixteen years old girl rape victim. She comes from a big family and her parents are roadside sellers who moved to Hlaing Tharyar from Ayeyarwady region ten years ago. Her education is only primary level and she sells seasonal fruits at the bus stop. She said about the rape case:

At 8:30pm, I returned home alone. On the way, one man appeared from a dark place and put his hand tightly on my mouth. He told me not to talk or shout and brought me into a small room. The room has no electricity, and is a very dark place. Both of my hands were tied with wired rope and my mouth was tied with a cloth so I would not shout. He raped me. After that he untied the wire rope and cloth, he threatened me not to tell anybody about the case. He said 'If you tell someone, I will burn your house'. I am so afraid of him and we live in the squatter area. So, I didn't tell about this problem to anyone. Two months later, I saw that I was pregnant. I told my mother about my case. She was upset and she went to get advice from the neighbours and she wanted me to abort the child.⁹

When the mother finally told the father about the rape, he immediately wanted to resolve it the formal way and opened the case. When the case was with the police, and they were about to open a court case, the perpetrator tried to negotiate the case with compensation. He wanted to pay the victim's family so that he would not go to prison after a court case. The girl victim said: "My parents didn't accept this solution [compensation]". Finally, the perpetrator got a prison sentence of three years. The girl's father said:

It is not justice for us. The perpetrator should be in prison more than three years. I am not satisfied with it. I heard that if a rape case happens, the committed person will be in the prison for about seven years. Three years in the prison for a crime case is not justice for the victim. Now, my daughter gave birth to his child. We don't want the child and tried to give the baby to other people. But, my daughter cannot give up her child. We are poor migrants, so we don't know powerful persons in the court and we didn't understand the legal procedure. Now, the case has ended. But we are still suffering from grievances of my daughter.¹⁰

In this case it is clear how informal solutions co-exist with the formal system and how migrants get a sense of injustice when they report their cases.

Debt and money saving disputes

Especially disputes related to money saving and lending are high in Hlaing Thayar, which can be related to the difficult economic situation of the migrants, who mainly depend on daily labour. Although local migrants have low incomes, some still participate in saving clubs. The amount of saving varies depending on their incomes. According to a lucky draw, the members of the clubs take turns in taking the saved money. The problem arises because some people run away after getting their money. Not paying back the collectively saved money causes disputes within the area. Borrowing money disputes were the most common type of dispute reported at the ward level. Poor people need to borrow money for daily survival and to repair the house, buy a motorcycle, pay back old debts, etc. Low-income people borrow money from the well-to-do people with high interest rate and they have to give interest on a daily basis. When the borrowers cannot give interest and investments back, disputes between them happen. Borrowing money with interest is not official so they have to try to solve the problem informally.

The informal justice process was applied by the one hundred household leaders. They take an oral agreement from both of the parties (borrower and lender). If the borrower does not follow the mutual agreement, the 100 HH leader call both parties to the ward office – a higher level of informal resolution. At this level a *Kan Wan* is made in front of the ward administrator. *Kan wan* is a kind of informal contract, where the parties to a case sign a letter where they promise to adhere to the decision or agreement made at the local leaders' office. This can for instance be the promise to pay back the debt. The *Kan Wan* is powerful in the informal solution at the ward level. If both sides do not follow the rules and agreement mentioned in the *Kan Wan*, the ward administrator has authority to transfer the case to the police. Threat is a part of resolving a case. Formal law and police are mainly effective in threatening the perpetrators to follow the decisions of the ward leaders. A 100 HH leader in Ward A said:

Ward level actors sometimes threaten [the perpetrators]. If say that if the solution of debts case, disputes case, borrowing money case etc. are not satisfactory at the ward level, the case will be transferred to the police. People are afraid of the police so that is why we threaten with police. Sometimes, the police also threaten the perpetrators informally.¹¹

So even though the debts are resolved informally, the formal system is present as a back-up or threat. This does not mean that in reality the debt cases end in the formal court according to formal procedure, but that the formal is used as a threat to the people. Debt case exemplify cases that simply cannot be resolved in the formal system, because lending money in the first place with interest and without formal registration is itself illegal.

Marriage disputes: Domestic violence and adultery

Low family income plays an important role in igniting marriage disputes in Hlaing Thayar where such cases are common especially among low-wage migrant workers. The quarrel happens in the late evening because men return home after drinking alcohol. They use their daily income for drinking alcohol. When the wife asks for money from the husband, a quarrel happens within the family and sometimes this quarrel turns into domestic violence.

As a first step, the 100 HH leaders resolve this problem, through negotiation between the husband and the wife. Sometimes, knife is used in domestic violence by both. WA and 100

HH leader said that using knife which is above 6 inches length is a crime case. If you hold like that knife, I can transfer to this case to the police. Crime must go immediately to the police. Whether you want to go to the police or you want to make *Kan Wun*. People choose signing on the *Kan Wun* letter. Sometimes, women report domestic violence directly to the Ward office, but men may also report. Usually the request is to divorce, not to report the crime of domestic violence. However, the WA does not really have the authority to divorce, so the case is dealt with through mediation and reconciliation. Usually this is done by simply postponing the time. And, WA make negotiation between them. I illustrate with the following example.

Case 3–Marriage dispute

The ward administrator told me that one late evening, one man arrived to the ward office. He had ran to the office and he seemed afraid of someone and closed the door. At the same time, one woman arrived to the ward office and she was very upset. She had a knife. The ward administrator heard the woman's voice: she was shouting that she would cut the husband with the knife. As the situation was a little bad, the ward administrator physically separated the couple and he took the knife. He then sat down to speak with the couple. The woman first complained:

My husband always drinks alcohol and therefore he does not work for income. So, I told him not to drink alcohol and to work to get an income. This evening, I saw him at the alcohol shop so I felt angry and wanted to kill him. When I went to the alcohol shop, he directly ran away to the ward office because he is afraid of my knife. I would like to divorce him now.¹²

The man was silent. He knows about his mistakes. The ward administrator said to the husband: "you have to work for the family. Your wife is right". He then told to the couple: "I cannot resolve the case right now so both of you come back after two days. Then you tell me if you want to still divorce and I will do it". After two days, they did not come to the ward office.

The ward level actors said that they settled disputes like the above one according to the following principle, which is a common Myanmar saying: "*gyi de ah hmu go ngeze, nge de ah hmu go pyaukshe*". This is to make the big problems small and the small problems disappear. This informal solution is useful and effective in marriage dispute cases. According to the law, the ward administrator has no official authority to divorce the couple, but he

mediates and gives a set time for the couple to think about the case. If the husband commits violence against the women, and the case is reported, the ward administrator transfers the case to the police. Men are afraid of the police, so they tend to behave after the warnings or threats of the ward leaders. Sometimes, women go directly to the police. When this happens the men will stay two or three days in the police outpost as a punishment. Therefore, the ward administrator can use the threat of the police in the informal solution.

A twenty-eight years old policeman said that some people directly report to the police outpost about dispute with neighbours and family members. The police resolve the cases there at the outpost informally.¹³ So it is not only the ward leaders who engage in solutions outside the formal legal system. The police also takes part.

Now I wish to turn to the example of adultery cases. Even though adultery is today a public crime in Myanmar, most adultery cases in Hlaing Thayar do not go to court because wives do not want men to go to prison. They prefer informal resolution and compensation. The following case also shows how adultery is resolved informally. This case also involves sex with a minor, and it shows that cases are resolved informally due to lack of knowledge of the law and economic hardship.

Case 4: Adultery and sex with a minor.

The case happened in June 2016. The victim is fourteen years old and her education is only eight standard. After dropping out of school, she worked at a pea industry. At her work, she met a man who was a leader at the work. He was already married, but he told the girl that he was divorced. He said to her: "if you marry me, I will support your family with two lakhs monthly". She believed him and slept with him one night. Before she went back home, the man said that he would arrange for them to get married. Now, you wait until this happens. She believed him. One female neighbour worried for the girl, since she did not come home in the night. The neighbour woman has experience and knowledge about these matters, because she worked as volunteer for an NGO. So she asked about the details of the girl. The next day when the woman saw the girl, she asked her why she did not come back home and where she slept and with whom.

The girl is a virgin and did not know about the men. She told the woman about her event and finally, she let her parents know about her case. First, the girl's family and the neighbour

women went to the ward office, and then the ward administrator informed about the case to the family of the man who had slept with the girl. The man did not come to the ward office. Only his wife came to the office. She requested the ward administrator not to open the case, formally. She wanted to solve it with money. She said she had never heard about her husband doing such a thing before. The neighbour woman wanted to settle the case legally because the man has a wife and he lives with her. But he lied to the young girl and slept with her. His wife preferred to solve with money and also the young girl's parents wanted to get compensation for the grievances. They wanted eight lakhs, but the other party did not agree. However, after much discussion the girl's parents agreed with six lakhs¹⁴ (8 July 2016).

According to current law in Myanmar, the man could have gotten a prison sentence for violating the law on monogamy, which prohibits adultery. Therefore, a formal case could have been opened with the police and court, but the parties and the ward administrator agreed to allow it to be resolved informally with compensation. What this case shows is that a man took advantage of a young girl and the poverty situation of her family – even promising money to her family if they married. Poverty is a key component here, also in not seeking formal justice. Even though a knowledgeable person – in this case the neighbour woman – gave advice to resolve legally the case, the parties did not accept her suggestion. Even a small amount of compensation money is support for the girl victim's family. They did not use the law.

Discussion

The empirical case studies clearly show that poor urban migrants very seldom use the formal justice system, with the only exception being rape cases, but even in this area it is likely that many cases remain unreported unless pregnancy occurs. Either people do not report their cases – and simply stay silent and find other means to deal with their insecurity – or they make use of the ward level actors' informal resolutions. Sometimes the police also provide informal resolutions. In this section, I wish to discuss why this is the case and relate the discussion back to theory.

Several aspects account for the ways that disputes and crimes are dealt with among the migrants. Migrants living in Hlaing Thayar do not have good education and much knowledge of the legal systems. They grew up struggling in their family and facing economic hardship without educational knowledge. Migrants who live in Hlaing Thayar are considered strangers

who do not have strong social connections and networks, which are important also in accessing different institutions. Another reason for not reporting the cases is that people cannot spend so much time in the formal office, because their daily income is so important for their survival and they cannot spend money for transportation, tea and snack including small costs for the case process. Another factor is that some cases are illegal cases, which cannot be resolved in the formal system. This for instance regards borrowing money from informal lenders with interest. As I showed above such cases can only be resolved informally, but this does not mean that the formal system is entirely absent. The ward level actors frequently use the police as a threat: for instance they tell people that if they break the *Kan Won* they will risk being sent to the police.

Another reason is that informal solutions mean quick decisions as the case settlement procedure can be finished within one day. Therefore, people prefer this type of solution. In addition, compensation is also effective in the informal justice system. Some people are more satisfied with a solution with compensation than for instance that the perpetrator goes to prison. Especially poor people are familiar with the ward level actors and they want to get money compensation without thinking about the grievances of the victims. There are different kinds of compensations such as solving with money on accidents, illegal marriage disputes and injury cases in disputes. The ward administrator and the one hundred household leaders can enforce these compensations.

Furthermore, Migrants feel uncomfortable to go to the formal authorities, including the police, and based on experience, they find that they are ineffective. In most theft cases people in the ward did not seek justice, because they never saw anyone get their stolen goods back. In addition, if they open the case legally, they are interrogated by the police. People do not want to answer the questions. Therefore, informal solutions are preferred when they have problems. Another reason for not reporting theft cases is related to religious beliefs. According to a sixty five years old woman from Ward B: "Buddhist Myanmar people think that if something is stolen, the victim is suffering from bad luck."⁶ Most of the people do not complain to the ward office." For instance, if a person lends money to another person, and that other person runs away with the money, the moneylender thinks that it is because he owes money to that person from the past life. This means that people do not want to seek a solution, because the suffering caused by losing the money is related to something bad that the person did in the past life. According to the Buddhist ideology, the victim then assumes

that bad things will be gone with the thief or another perpetrator. This makes people feel more comfortable. This is a quick solution for the people. So this is one of the reasons why people do not report cases or desire that the perpetrators get punished.

Due to the above-mentioned reasons, informal justice resolutions are prevalent in the study areas. The ward level actors seek to reduce the negative aspects of disputes as they act as mediators, but other factors also means that the migrants do not report cases at all. The way that migrants deal with crimes and disputes in Hlaing Thayar reflects a situation of legal pluralism, where it is not only, in fact very rarely state law and institutions that are drawn on, but more the informal resolutions and self-help. These developments can be linked to comparable processes across the world. As Tamanaha (2008) argues, the increasingly massive slums in the large cities around the world function with little or no official legal presence. Observers described legal aspects of these developments in terms of legal pluralism. The conditions in the slums give way to the growth of "self-creating", "private", or "unofficial" legal orders (Tamanaha 2008, p.386, 387). In addition to this argument, the case of Hlaing Thayar shows that poor migrants stand at a much lower chance of accessing and using the legally plural context, than for instance natives or more well off people have in the township. Lack of social networks and poor economic situations has a clear impact on the extent to which people can use legal pluralism. Erin Moore (1993), makes a similar point about India, where she shows how access to formal and informal justice is related to the cultural construction of power, focused on the combination of money, lineage, caste and gender including education and connections in town. Women and the poorest or low-caste men are not included in the legal areas. Women, the poor, households with few members, and low-caste people have to find other avenues for resolution and resistance. That means that legal pluralism is not the same as unequal access to resolution processes. The same applies to Myanmar, and in Hlaing Thayar the poor informal migrants are the most excluded.

Conclusion

Recently, Myanmar has embarked on a comprehensive transformation policy, which is resulting in political, social and economic changes for everyday life. These changes will impact on diverse social groups and across the national space. Increased urbanisation and migration from rural to urban areas is an important element of the Myanmar transformation process that so far has received only scant attention. Yangon city with more and more foreign

investments and growing industries provide enormous opportunities for work and improvement of livelihoods, which also attracts poor rural villagers to the city. However, in the process not everyone gets sustainable jobs or safe places to live. This creates negative side-effects and crime. One of the big challenges of the democratic and economic transformation is that the Myanmar government is still weak in implementing law and providing security, especially for the growing slums and squatter areas in Yangon city where many poor migrants live. In the current situation of Myanmar, different kinds of cases can be found in the media, social networks, newspaper, etc. on the insecurities of everyday life.

Similarly, weakness in security and safety were found in my study areas. In this paper, I have explored how poor urban migrants settle the disputes and crimes in Yangon's largest industrial areas, Hlaing Thayar, which is also the most infamous area for crime in Yangon region. My argument is that poor urban migrants have very low access to formal justice institutions. I found that migrants prefer informal solutions to formal solutions. Lack of legal knowledge, low education and poor economic conditions are main barriers, which make people fail to go for a formal solution. Justice options in Hlaing Thayar comprise formal and informal solutions including self-help. Many cases, especially theft are left unreported, and with the exception of some rape cases, the migrants prefer the resolutions by the ward leaders. Negotiation, compensation, signing informal agreements (*Kan Wan*), and threatening the perpetrators with the police are applied by the ward level actors. Even when rape cases are settled the formal way at the court, the perpetrators are unsatisfied with the solution. It was found that shame, silence and fear of rape are core barriers to overcome the difficulties to access justice.

I attempted in this paper to highlight the legal pluralism in justice seeking of the poor migrants. Theoretically, legal pluralism implies the existence of different institutions for dispute resolution, but legal pluralism does not mean equal access to all. As I have argued in this paper, poor migrants especially have unequal access to formal as well as informal justice. With the increasing migration from rural to urban areas, it becomes important for the government to regulate legal procedures for migrants' issues. It is also important that legal aid NGOs and CBOs provide assistance to poor migrants to help them find resolutions to for instance rape and child abuse cases. Practical laws are necessary to get the trust of local people. This study contributes with information that may help the government, legal aid

providers, NGOs and CBOs to better understand the access to justice strategies of poor urban migrants and the barriers they face.

Endnotes

1. The fieldwork was conducted together with Associate Professor Hla Hla Kyi from October 2015 to September 2016. This research involved sixty interviews with migrant workers, natives and Ward level actors.
2. One exception is the study by Kirsten McConnachie (2014) on legal pluralism among Karen refugees on the Thai-Myanmar border.
3. I do not use the real names of the wards, due to sensitivity of the topic and I want to keep it anonymous.
4. Interview with native women in Ward B, 3 Sept 2016.
5. Interview, male garment factory worker, Ward A, 24 August 2016. It is clear that young women are weak physically and afraid of the gangsters. Women wear gold made things. Men being robbed are very rare. It was found this gender aspect of the robbery case.
6. Interview with native woman, Ward A, 24 August 2016.
7. Interview, young girl, Ward B, 24 July 2016. Increasing robbery and theft case were found in the current situation. It means that security guard cannot take care of the people and there is no safety for them. It may be their trust of getting back their properties from the thieves and robbers..
8. Interview, motorbike drivers at the gate, Ward B, 3 Sept 2016. When I asked the six motorbike drivers about the motorbike theft, all replied not to report to the police. After reporting to the police, it should be noted that lie cases can be found within the community.
9. Interview, the victim at her house, Ward A, 30 May 2016. It shows that adolescent girls have no knowledge about the rape. Threatening, fear and shameful are main barriers for reporting to the court.
10. The source comes from the interview with the victim's father on the 30 May 2016.
11. Interview, one hundred household leaders, Ward A, 28 August 2016.
12. Interview, one hundred household leaders, Ward Administrative office in Ward A, 6 Dec 2015.
13. Interview, policeman at the police outpost in Ward B, 27 September, 2016.
14. Interview, educated native woman, Ward B, 8 July 2016.

References

- Bourtry, Maxime, *From Rural to Urban Poverty: Some Thoughts on Coping Strategies and Evolutions in Political Transitional Context, Unpublished report* 2014.
- Kyed, Helene Maria. Introduction. Legal pluralism and international development interventions. *Journal of Legal Pluralism*, no 63, (2011)
- Dauvergne, Catherine. For an exploration of the Jurisprudential aspects, *Jurisprudence for an Interconnected Globe* 2003.
- Forbes, Eben. 2016. "On the frontier of Urbanization: Informal Settlements in Yangon, Myanmar". *Independent Journal of Burmese Scholarship* 1(1):197-238.
- Griffith, John, "What is legal pluralism" *journal of legal Pluralism*, no 24, (1986): 4-9.
- Habermas, Jurgen. *The Postnational Constellation: Political Essays*, Chapter 4, (2001).
- Harper, Erica. Customary Justice: From Program Design to Impact Evaluation, International Development Law Organization, 2011.
- Hooker, M.B. *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws*. Oxford: Clarendon Press 1975.
- Japan International Cooperation Agency, Yangon City Development Committee, *The project for the Strategic Urban Development Plan of Greater Yangon, Final Report 1, Part II (2013)*.
- Macaulay, Stewart. "Images of Law in Everyday life: The lessons of School, Entertainment and Spectator Sports," *21 Law & Society Review* 185 (1987).
- McConnachie, Kirsten, *Governing Refugees. Justice, Order and Legal Pluralism*. New York: Routledge 2014.
- Moore, Sally, Falk. *Social facts and fabrications: Customary Law on Kilimanjaro, 1880-1980*. Cambridge: Cambridge University Press 1986.
- Pospisil, Leopold. *The Anthropology of Law: Comparative Theory of Law*. New York: Harper and Row 1971.
- Santos, Boaventura De Sousa. "The Law of the Oppressed: The Construction and Reproduction of Legality in Pasagarda," *12 Law & Society Review* 5 (1977).
- Tamanaha, Brian Z. Understanding Legal Pluralism: Past to Present, Local to Global p.386-7 (2008).
- UNDP, UNICEF, UNWomen. *Informal Justice System*, p.8, 30 and 34 (2012).
- United Kingdom Department for International Development (DFID), *Non-state Justice and Security Systems* 2004,
- Wojkowska, E. *How Informal Justice Systems Can Contribute*, Oslo: United Nations Development Programme, Oslo Governance Centre, 2006.
- Woodman, Gordon R. "What is the Commission About?," *14 Newsletter of the Commission on Folk Law and Legal Pluralism* 3 (1987-88).